



State Water Resources Control Board SURNAME/FILES



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights
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Arnold Schwarzenegger
Governor

FEB 25 2009

In Reply Refer
to:363:LVL:A026036A

CERTIFIED MAIL

George Altamura
101 South Coombs Street, Suite A
Napa, CA 94559-4580

Exclusive Estates Wine Group, LLC
1124 Larpenteur Avenue
St. Paul, MN 55113

Christina Picetti
Black Stallion Winery, LLC
4089 Silverado Trail
Napa, CA 94558

Arik and Hannah Housley
4075 Silverado Trail
Napa, CA 94558-1113

Ladies and Gentlemen:

NOTICE OF PROPOSED REVOCATION, PERMIT 18272A (APPLICATION 26036A), NAPA RIVER IN NAPA COUNTY

Enclosed is a Notice of Proposed Revocation of water right Permit 18272A. You may request a hearing on the proposed revocation. Unless you request a hearing within 15 days from date of receipt of this letter, the State Water Resources Control Board (State Water Board) will revoke the permit without further notice.

If the State Water Board conducts a hearing, the hearing will focus on whether the cause for revocation of Permit 18272A, as set forth in the Notice of Proposed Revocation, has been established. If you have any questions, please telephone Laura Lavallee, the staff person assigned to this matter, at (916) 341-5422.

Sincerely,

ORIGINAL SIGNED BY

John O'Hagan, Manager
Enforcement Section

Enclosures

cc: Kevin Taylor
Napa River Watermaster
2440 Main Street
Red Bluff, CA 96080

bcc: field file

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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Permit 18272A (Application 26036A)

George Altamura

NOTICE OF PROPOSED REVOCATION

SOURCE: Napa River

COUNTY: Napa

You are hereby notified that, pursuant to sections 1410-1410.2 of the California Water Code, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), is proposing to revoke Permit 18272A because the Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 18272A and has not made beneficial use of the water in accordance with the permit, the Water Code, and the State Water Board's regulations.

The proposed revocation is based upon the following facts, information and conclusions:

The State Water Board issued Permit 18272A on June 3, 1981 to George Altamura (Permittee) for the diversion and use of water on his property. The current version of the permit authorizes Permittee to divert a total of 30 acre-feet of water to storage in one offstream reservoir, at a rate of 2 cubic-feet per second, for the purposes of heat protection, frost protection and irrigation on 20 acres within Sections 15 and 22, T6N, R4W, MDB&M. The collection season is November 1 through May 15.

Under the current terms of the permit, construction work was to be completed by December 31, 1998, and water was to be applied to maximum beneficial use by December 31, 2003.

A. PERMITTEE HAS FAILED TO COMMENCE, PROSECUTE WITH DUE DILIGENCE, AND COMPLETE THE WORK NECESSARY TO APPROPRIATE WATER UNDER THE PERMIT

1. Permit 18272A was issued with a deadline to complete construction of December 1, 1984, and a deadline to apply water to maximum beneficial use of December 1, 1985. The place of use was 30 acres of vineyards on a 33-acre parcel.
2. On April 5, 1985, the Permittee submitted a petition for an extension of time to complete construction of the project and to apply the water to beneficial use. Division staff inspected the project and found that the Permittee had planted 20 acres of vineyards and installed a drip irrigation system, but the storage reservoir authorized by the permit had not been built. Water for irrigation was directly diverted from the Napa River by portable pump under riparian right. Frost protection was accomplished with a wind machine and no heat protection had occurred. On July 1, 1985, the Division granted an extension of time to commence or complete construction work or apply the water to full beneficial use. The time extension order required construction to be complete by December 1, 1990, and that water be fully used by December 1, 1991.

3. On June 22, 1992, Division staff inspected the project and found no additional vineyards had been planted, the Permittee was diverting water from a well for irrigation, and construction of the reservoir had still not started.
4. On June 3, 1993, the Permittee submitted a second petition for an extension of time to the development schedule. Permittee indicated that drought was the reason the reservoir had not been constructed. On November 12, 1993, the Division granted an extension of time to commence or complete construction work or apply the water to full beneficial use. The time extension order required construction to be complete by December 31, 1998, and that water be fully used by December 31, 2003. In addition to the time extension, the order reduced the place of use from 30 acres to 20 acres.
5. Between 1991 and 2000, the Permittee did not file any progress reports for Permit 18272A. In 2001, after eight years without any contact from the Permittee, Division staff attempted to ascertain whether Mr. Altamura still owned the property served by Permit 18272A. Division staff determined that the property was under new ownership, and consequently, by letter dated August 16, 2001, Permit 18272A was assigned to VHV LLP. In reality, VHV LLP never owned the property. Although a 2-acre parcel had been subdivided and sold to a third party (APN 039-390-017-0000), Mr. Altamura still owned the rest of the property, including the point of diversion, a majority of the place of use, and the reservoir site. A copy of this assignment letter was not sent to Mr. Altamura or the owners of the 2-acre parcel (currently owned by Arik and Hannah Housley).
6. VHV LLP filed progress reports for Permit 18272A for 2001 through 2005, indicating on each report that construction of the reservoir had not started. By notation on the 2003 report, VHV LLP requested a ten year extension for Permit 18272A; however a petition for an extension was never filed with the Division.
7. Late in 2005, Mr. Altamura again subdivided the remaining portion of his property. He retained a 20-acre parcel (APN 039-290-020-0000), which included the point of diversion, the reservoir site and some of the place of use, and sold the remaining 20-acre parcel (APN 039-390-021-0000) to Exclusive Estates Wine Group, LLC.
8. On November 28, 2006, the Division received a complaint [Complaint (28-34-08)] from the Department of Water Resources (Watermaster) that VHV LLP was in violation of Term 16 of Permit 18272A by failing to participate in the water distribution program for the Napa River. In the process of investigating Complaint (28-34-08), Division staff visited the project property and noticed that construction of the reservoir had not yet begun, and therefore no beneficial use of water under the permit could have occurred.
9. As a result of the site visit, Staff also discovered the mistake that had been made when Permit 18272A was assigned to VHV LLP. By letter dated January 15, 2008, Division staff notified Mr. Altamura that ownership of Permit 18272A was being reassigned to him. Both VHV LLP and Exclusive Estates Wine Group were sent a copy of this assignment letter.
10. On May 21, 2008, Mr. Altamura sold his remaining property to Black Stallion Winery LLC, which is a subsidiary of Exclusive Estates Wine Group.
11. On several occasions, including February 11, 2008, March 10, 2008, and November 2008, Division staff contacted Mr. Altamura to discuss his permit. During each conversation Mr. Altamura stated that he wished to retain ownership of Permit 18272A and Division staff reminded him of the requirement to file a petition for an extension of time in order to avoid revocation of Permit 18272A. During each contact, Mr. Altamura expressed his understanding of the requirement and stated that a petition would be forthcoming.

12. Permittee failed to complete construction of the project by the December 31, 1998 deadline. Permittee failed to complete application of water to beneficial use by the December 31, 2003 deadline, and therefore has not made full beneficial use of the water as contemplated in the permit and in accordance with the Water Code and rules and regulations of the State Water Board.

B. BASED ON THE ABOVE FACTS AND INFORMATION, THE DIVISION CONCLUDES THAT CAUSE EXISTS FOR THE REVOCATION OF PERMIT 18272A PURSUANT TO WATER CODE SECTION 1410, SUBDIVISION (a) BECAUSE:

Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 18272A and has failed to apply to beneficial use any of the water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.

As required by Water Code section 1410.1, you are hereby notified that unless the Division receives a written request for a hearing, signed by or on behalf of the Permittee, the State Water Board will revoke Permit 18272A based on the above facts, information and conclusions. The written request for hearing must be postmarked or delivered no later than 15 days from the receipt of this notice. You may request a hearing by delivering or mailing the request to the State Water Board at the following address within the time period provided: Division of Water Rights, P. O. Box 2000, 1001 I Street, Sacramento, CA 95812-2000.

Based on the above facts and conclusions, the State Water Board, Division of Water Rights will revoke Permit 18272A unless the Division receives a written request for hearing within the time period specified above.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY *SL for*:

Victoria A. Whitney, Chief
Division of Water Rights

Dated: **FEB 25 2009**

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